IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VAT Appeal No.103/2019(O&M)
Date of decision:30.7.2019

M/s Braham Sarup and Sons

..............Petitioners

v.

The Union Territory,Chandigarh and others

..............Respondents

Coram: Hon'ble Mr.Justice Jaswant Singh
Hon'ble Mr.Justice Lalit Batra

Present:- None for the Appellant.

Jaswant Singh,J,(Oral).

There being delay of **6** days in refiling the instant appeal, application bearing **CM 7238-CII/2019** has been filed.

The delay in refiling, being insignificant, is condoned. Application stands allowed.

Main case.

The appellant, a partnership concern having three partners, is running a Filling Station(Petrol Pump in Sector 28, Chandigarh. It was registered with Sales Tax Authority,Chandigarh vide CST No.CHA 265 dated 31.7.1967 under the Punjab General Sales Tax Act,1948 (as applicable to UT Chandigarh). It is averred that this number had become inoperative and it had not been allotted number under the VAT Act,2005. It is further averred that petitioner concern had been filing its returns since the grant of certificate upto **1991-92** and no tax was payable. It is alleged that the Managing

Partner of the petitioner did not produce books of accounts/declaration form in Form C, for Accounting Period/Assessment Year **1994-95**, upon which ETO-cum-Assessing Authority framed assessment of the applicant concern on best-judgment-basis in an illegal manner besides imposing penalty equivalent to 150% of the tax as well as interest, on the ground of non-production of books and there being difference in the sales as per trading account and sales as per sales summary. Against the said demand, petitioner concern filed an appeal under Section 20 of the Punjab General Sales Tax Act,1948 before DETC(Appeals)UT Chandigarh-respondent no.2. Alongwith the said appeal an application under clause (5) of Section 20 was also filed for hearing the appeal without depositing the amount of additional demand created by the Assessing Authority on the ground that the firm had no financial resources to deposit the additional demand created by the Assessing Authority. Respondent no.2 vide order dated **19.7.2011(A-2)** directed the petitioner concern to deposit 25% of the amount involved within one month of the receipt of the order and produce proof of such deposit on 13.9.2011 failing which the appeal was lliable to be dismissed in limine. Against the said order appellant preferred appeal followed by Reference Applications before the VAT Tribunal,Chandigarh-respondent no.3. Respondent no.3 vide order dated **22.5.2018(A-4)** dismissed the Reference Application on the ground of delay of more than 317 without furnishing any convincing reasons or documents to justify the said delay. The appeals filed by Appellant, as noticed in the impugned order dated **22.5.2018(A-4)**, already stood dismissed by respondent no.3, vide order dated 24.7.2013/22.10.2013 due to non-deposit of 25% of total demand. Hence the present appeal for referring the question of law arising out of order dated **22.5.2018(A-4).**

Notice of motion is yet to be issued.

In the meanwhile, application bearing **CM 15186-CII of 2019** has been filed by the appellant,supported by an affidavit of Rakesh Mohindra,partner of petitioner firm with the averments that during the pendency of the present appeal, respondent department started recovery proceedings and initiated coercive steps due to which one of the partners of the firm (Rakesh Mohindra) deposited amount of **Rs.92 lacs** with the department. It is further averred that the appellant does not want to pursue the present appeal and hence the same may be dismissed as withdrawn.

In view of the prayer made, **CM 15186-CII/2019** is allowed and appeal is dismissed as withdrawn.

(Jaswant Singh)
Judge

30.7.2019. **(Lalit Batra)**
joshi **Judge**

Whether Speaking/reasoned	**Yes/No**
Whether Reportable	**Yes/No**